

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 23rd day of August, two thousand and five.

Present: HON. BARRINGTON D. PARKER,
HON. RICHARD C. WESLEY,
HON. PETER W. HALL,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

- v -

(05-5630-cr)

GILFREDO MARTINEZ,

Defendant-Appellant.

Appearing for Defendant-Appellant:

Yuanchung Lee, Federal Defenders of New York,
Inc., New York, NY.

Appearing for Appellee:

Christine Meding, Assistant United States Attorney
(Michael J. Garcia, United States Attorney,
Southern District of New York; Celeste L.
Koeleveld, Assistant United States Attorney, *on the*

brief), New York, NY.

Appeal from the United States District Court for the Southern District of New York
(Kaplan, J.).

1 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND**
2 **DECREED** that the judgment of the District Court be **AFFIRMED**.

3 Defendant Gilfredo Martinez appeals from a judgment entered in the United States
4 District Court for the Southern District of New York following a bench trial on stipulated facts
5 before Judge Lewis A. Kaplan, convicting Martinez of the following three crimes: (1) possessing
6 a firearm after having been convicted of a felony, in violation of 18 U.S.C. § 922(g)(1); (2)
7 distributing and possessing with intent to distribute cocaine base, in violation of 21 U.S.C. § 841;
8 and (3) possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C.
9 § 924(c)(1)(A)(i). Judge Kaplan sentenced Martinez to 162 months' imprisonment, followed by
10 nine years' supervised release, and imposed a mandatory \$300 special assessment. On appeal,
11 Martinez asserts that the District Court erred in denying his motion to suppress the firearm
12 obtained during the stop-and-frisk that led to his arrest.

13 Familiarity by the parties is assumed as to the facts, the procedural context, and the
14 specification of appellate issues. After undertaking *de novo* review of the district court
15 judgment, we affirm substantially for the reasons stated by Judge Kaplan on the record.¹

¹In reaching our decision, we do not adopt that portion of the district court's ruling that the initial complaint was not an anonymous call. We find it unnecessary to consider that factor since, under all the circumstances at the time, the defendant's furtive behavior combined with the specificity of the "tip" were adequate to support the officers' reasonable suspicion.

1 Accordingly, the judgment of the District Court is hereby affirmed.

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For the Court
Roseann B. MacKechnie, Clerk

By: